Supreme Court, U.S.
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No. 00-

IN THE

Supreme Court of the United States

BOARD OF EDUCATION OF THE
SAN JUAN SCHOOL DISTRICT,

Petitioner,

v.

JIMMY SINAJINI, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a settlement agreement and consent decree automatically make the plaintiffs prevailing parties under 42 U.S.C. § 1988 merely because the agreement and decree modify the defendant's behavior in ways that benefit the plaintiffs, irrespective of whether the plaintiffs obtained actual relief on the merits of their claims.

PARTIES TO THE PROCEEDINGS

Plaintiffs/Respondents are Jimmy Sinajini, Bill Joe Sinajini, Joe Lee Begay, Herbert Begay, Lena Begay, Cecil Vijil, Shirley Vijil, Clara Lameman, Leona Vijil, Holly Nez, Howard Nez, Hannah Nez, Marion Nez, Gilbert Rockwell, Linda Rockwell, Lena Rockwell, Edith Bigman, Juanita Bigman, Dorothy Bigman, Seth Bigman, Anthony Dee, Gray Dee, Howard Holiday, Peter Holiday, Teddy Holiday, Harold Vijil, Alfred Vijil, Tully Vijil, Ferrell Collins, Sherril Collins, Ilene Collins, Martha Collins, Sarah Billy, Brenda Billy, John Billy, Leroy Atcitty, Patricia Dennison, Tom Dennison, Arlene Dennison, Jimmy Goodman, Jr., Gilbert Goodman, Lucy Goodman, Jimmy Goodman, Elaine Williams, Lorinda Williams, Mary Ann Williams, The Red Mesa Chapter of the Navajo Tribe, The Oljato Chapter of the Navajo Tribe.

Plaintiffs/Intervenors are United States of America, Navajo Nation, Aneth Chapter, Natasha Livingston, Dawny Clark, Nathan Clark, Latoya Clark, Sherrill Clark.

Defendant/Petitioner is the Board of Education of the San Juan School District.

Defendants are David Adams, Maxine Nielson, Harold Lyman, Tom Holiday, Robert Billie, Kenneth Maughan, The San Juan County Commission, Dale Holmes, William G. Dunow, Case E. Broderick, Utah State Board of Education.

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Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINIONS BELOW

The district court's order approving and adopting the 1997 Agreement of Parties and incorporating the agreement into a consent decree is reported at 964 F. Supp. 319. The district court's subsequent decision awarding respondents limited attorney's fees (Appendix ("Pet. App.") 14a-46a) is reported at 47 F. Supp. 2d 1316. The decision of the court of appeals (per McKay, J., joined by Lucero and Murphy, JJ.) reversing (Pet. App. 1a-13a) is reported at 233 F.3d 1236. The order denying the petition for rehearing and rehearing en banc may be found at Pet. App. 47a-48a.

STATEMENT OF JURISDICTION

The court of appeals entered its opinion and order on November 30, 2000, and denied rehearing and rehearing en banc on January 17, 2001. Pet. App. 13a, 47a. Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTE INVOLVED

This case involves the interpretation of the Civil Rights Attorney's Fee Awards Act of 1976, 42 U.S.C. § 1988(b), which as amended provides:

> In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C. § 1681, *et seq.*], the Religious

> Freedom Restoration Act of 1993 [42 U.S.C. § 2000bb, *et seq.*], title VI of the Civil Rights Act of 1964 [42 U.S.C. § 2000d, *et seq.*], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

STATEMENT OF THE CASE

This petition arises from a dispute over the proper standard to apply when determining whether a voluntary consent decree merits attorney's fees under 42 U.S.C. § 1988.

A. Underlying Litigation

Respondents and petitioner Board of Education of the San Juan County School District ("the District") have long been engaged in litigation over the education of Native American students in a remote area in southern Utah. In 1974, respondents brought a civil rights class action in federal court alleging that the District had denied equal educational opportunities to Native Americans on the basis of race. Pet. App. 3a. In 1975, the parties reached an agreement and entered into a comprehensive consent decree ("1975 Consent Decree"). *Id.*

In 1992, after 17 years of silence, respondents filed a motion in the district court to enforce the 1975 Consent

Decree (hereafter, the "*Sinajini* enforcement action") based on allegations that the District had failed to comply with its obligations under the decree. Pet. App. 3a. The motion also raised numerous allegations and legal issues beyond the scope of the 1975 Consent Decree. *Id.* at 3a-3b. On the District's motions, the district court repeatedly limited the *Sinajini* enforcement action to issues involving compliance with the 1975 Consent Decree, striking those portions of the motion based on allegations or theories that fell outside the decree. *Id.* at 4a.

Respondents then brought two additional lawsuits (the "*Meyers* action" and the "*Chee* action") alleging claims beyond the scope of the 1975 Consent Decree. Pet. App. 4a. The *Meyers* action involved the issue whether the District (as opposed to the Navajo Nation, the Federal government, or the State of Utah) had the sole legal duty to provide educational services to Native American children living on a remote part of a Navajo reservation. *Id.*; *see Meyers v. Bd. of Educ. of San Juan*, 905 F. Supp. 1544 (D. Utah 1995). The *Chee* action involved issues relating to personal injury claims and special education programs for a few Native American children. *See* Pet. App. 4a. After the district court ruled that the District indeed had some duty — shared with the Federal government, the Navajo Nation, and the State of Utah — to educate Native American children on the reservation, the parties agreed to settle the *Meyers* action. *See* 905 F. Supp. 1544. As a result, the District, in cooperation with the State of Utah, the United States government, and the Navajo Nation, constructed a new high school. Since the *Meyers* settlement afforded some of the relief respondents had sought, *see id.*, the District agreed to pay reasonable attorney's fees. Pet. App. 4a.

However, the District adamantly disputed respondents' allegations in the *Sinajini* enforcement action and the separate *Chee* action. *See* Pet. App. 14a-46a. After years of additional litigation, with the parties still far apart on the merits of respondents' claims, both sides agreed to end the court battles, put the past behind them, and work together in a cooperative manner for the benefit of all the District's children. *See Sinajini v. Bd. of Educ. of San Juan*, 964 F. Supp. 319, 320-21 (D. Utah 1997). To that end, in 1997 the parties entered into a settlement agreement ("1997 Agreement") in which they agreed to employ a variety of novel mechanisms to create a new consultative relationship between the Native American community and the District. *Id.*; Pet. App. 4a. This agreement was incorporated into a consent decree ("1997 Consent Decree"). Pet. App. 4a; *see Sinajini*, 964 F. Supp. 319 (text of 1997 Agreement and Consent Decree). By agreement, the 1975 Consent Decree was dissolved and its obligations replaced by those of the 1997 Agreement and Consent Decree, which were substantially less onerous. Pet. App. 4a; *compare*, *Sinajini*, 964 F. Supp. 319 (1997 Agreement and Consent Decree) *with Sinajini v. Board of Educ.*, No. 74-346, 1975 U.S. Dist. Lexis 15526 (D. Utah, October 31, 1975) (1975 Consent Decree).

As part of the settlement, the parties expressly agreed that the District was in no way conceding liability or admitting any of respondents' allegations. *Sinajini*, 964 F. Supp. at 320-21. Both the 1997 Agreement and the 1997 Consent Decree stated that the District "denies any violation of any state or federal law or any wrongdoing" and noted that there had "been no judicial determination" on the merits of plaintiffs' claims or the District's defenses. *Id.* With that critical understanding, the *Sinajini* enforcement action and the *Chee* action were dismissed.

B. Attorney's Fees Litigation Before the District Court.

Respondents later filed an application with the district court for attorney's fees pursuant to 42 U.S.C. § 1988, which the District opposed.[1] In its decision granting only limited fees, the district court first noted that merely "[o]btaining a consent decree, by itself, is not sufficient to confer [prevailing party] status." Pet. App. 25a. Relying on this Court's decision in *Farrar v. Hobby*, 506 U.S. 103, 111-12 (1992), the district court reasoned:

> To "prevail" on a civil rights claim, a plaintiff must not only "obtain an enforceable judgment against the defendant from whom fees are sought . . . or comparable relief through a consent decree or settlement," but must show that "actual relief on the merits of this claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff."

Pet. App. 25a (quoting *Farrar*, 506 U.S. at 111-12). The court underscored that obtaining at least some relief "on the merits" is a prerequisite to attorney's fees:

> "Plaintiffs may be considered 'prevailing parties' for attorney's fees purposes if they

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1. A provision in the 1997 Agreement stated that the parties would negotiate agreements concerning costs and attorney's fees. In the event the parties could not reach an agreement, the right was reserved to apply to the district court for costs and attorney's fees. The parties stipulated that the attorney's fees "provision [in the 1997 Agreement] shall not be viewed as any indication that fees are or are not due in this matter." 964 F. Supp. at 326-27.

> succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Hensley v. Eckerhart*, [461 U.S. 424, 433 (1983)]. "[L]iability on the merits and responsibility for fees go hand in hand." *Kentucky v. Graham*, [473 U.S. 159, 165 (1985)]. Therefore, "a civil rights plaintiff must obtain at least some relief on the merits of his claim." *Farrar*, [506 U.S. at 111].

Pet. App. 26a-27a (emphasis omitted).

Since, by express agreement of the parties, the allegations against the District were wholly unresolved, with an express denial of liability on the merits, the district court turned to the Tenth Circuit's two-part catalyst test to determine whether and to what extent respondents could be considered prevailing parties. Pet. App. 27a. Under that test, a plaintiff is required to demonstrate (1) that the lawsuit was a " 'substantial factor' " in securing the relief obtained and (2) that the relief obtained was " 'legally required.' " *Id.* (quoting *Kansas Health Care Ass'n, Inc. v. Kansas Dept. of Social & Rehab. Servs.*, 31 F.3d 1052, 1053 (10th Cir. 1994)). Regarding the second prong, the court stated that "the test is not whether the relief obtained is beneficial to the plaintiffs," but whether it was required by law:

> If it has been judicially determined that defendant's conduct, however beneficial it may be to plaintiffs' interests, is not required by law, then defendants must be held to have acted gratuitously and plaintiffs have not prevailed in a legal sense.

Pet. App. 40a (quoting *Kansas Health Care Ass'n, Inc.*, 31 F.3d at 1055).

Applying these standards, the court addressed whether respondents prevailed on their claims in the *Sinajini* action to enforce the 1975 consent decree.[2] The focus of the court's inquiry was the extent to which respondents obtained any of the relief they were seeking. The court first observed that fifteen of respondents' 21 distinct claims for relief "were either stricken or abandoned." Pet. App. 30a. Accordingly, the court initially centered its analysis on the six remaining claims. In claim (2), respondents sought an order finding the District in contempt for failure to comply with the 1975 Consent Decree. The district court found that respondents did not prevail on this claim because no such relief was granted; indeed, the 1997 Agreement expressly disclaimed any suggestion that the District was not in total compliance with the 1975 Consent Decree or applicable law. Pet. App. 30a-31a.

In claim (9), respondents asked the court to impose on the District "specific accounting methods and practices to account for all expenditures required by the [1975] Decree." Pet. App. 31a. By contrast, the 1997 Agreement provided that the District would "consider" the joint "recommendations" of two persons (one chosen by the District, the other by respondents) about how to make its

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2. With respect to fees in the separate *Chee* action, the district court (Sam, J.) ruled that respondents would have to seek fees in *Chee* before Judge Jenkins, before whom the *Chee* case had been litigated. Judge Jenkins subsequently considered and rejected the fee application in *Chee*, ruling that respondents were not prevailing parties in that action. On appeal, the court below reversed this decision and remanded with instructions that Judge Sam consider respondents' request for fees in *Chee* together with their request for fees in the *Sinajini* enforcement action. Pet. App. 6a. The District does not seek certiorari on that holding.

financial "records more understandable to the public," but that the District would retain the "sole discretion" to "implement" or reject any such "recommendations." Pet. App. 31a-32a (quoting 1997 Agreement). The district court found that because nothing was legally imposed on the District — any action being left to its "sole discretion" — respondents did not prevail on this claim. *Id.* at 32a. Moreover, the specific expenditure requirements imposed on the District in the 1975 Consent Decree were terminated, not continued. *Id.* at 4a; 964 F. Supp. 319, 320 -27.

In claim (10), respondents asked for an order requiring the District to report on a quarterly basis to the court and various government bodies. Pet. App. 32a. The district court found that respondents did not prevail on this claim because the 1997 Agreement did not require any such reporting nor subject the District to any special monitoring. *Id.* at 33a. Specific reporting requirements and a monitoring regimen had existed under the 1975 Consent Decree but were extinguished when the 1997 Consent Decree came into effect. *See Sinajini*, No. 74-346, 1975 U.S. Dist. Lexis 15526, *25-27.

In claim (12), respondents sought to eliminate the need for negotiation as a prerequisite to court action. In a provision that substantially benefits the District, the 1997 Agreement instead established an extensive dispute resolution mechanism. The court denied prevailing party status on this claim. *Id.* at 33a.

In claim (18), respondents sought the expansion, renovation, and improvement of two secondary schools in the southern part of the school district. The District conceded that the 1997 Agreement provided such relief, which was also relevant to certain provision in the 1975 Consent Decree.

The district court held that respondents prevailed on this claim and fees have been paid in connection therewith. *Id.* at 35a-38a.

In claim (20), respondents sought to force the District to construct an elementary school at Monument Valley, Utah. The 1997 Agreement required only that the District use its "best efforts to obtain funding from Congress and appropriate federal or state agencies" for that end, but specified that the District had no "duty or obligation" to construct the requested school except to the extent such a duty already existed under current law (which was not the case). The court found this was insufficient to alter the parties' legal relationship and thus held that respondents did not prevail on this claim. Pet. App. 33a-34a.

Finally, the district court addressed respondents' claim that they had prevailed by obtaining certain benefits which they had never sought in their pleadings. Pet. App. 38a-41a. To replace the adversarial relationship between the parties with a cooperative approach, the 1997 Agreement established certain committees composed of experts chosen by each side to make recommendations and present educational plans to the District. However, the agreement also provided that the District " 'may reject or approve each committee plan or any part thereof' " and that " '[i]f the [District] rejects a committee plan, or any part thereof, the plan shall not be binding on the District.' " *Id.* at 40a (quoting the 1997 Agreement and Consent Decree). The district court ruled that since the creation of consultative committees was neither requested in their pleadings nor required by law, respondents did not prevail on this claim. *Id.* at 41a. The court also rejected several other theories for attorney's fees which are not at issue here. Pet. App. 42a.-45a.

The district court then awarded respondents limited fees based on their limited success in the *Sinajini* enforcement action. Pet. App. 45a.

C. The Tenth Circuit Reverses the District Court's Ruling on Attorney's Fees, Creating a New Standard

On appeal, the Tenth Circuit reversed on the ground that the district court had applied "an erroneous legal standard" in determining prevailing party status. Pet. App. 6a-7a. The court stated that the district "court erred when it conflated the *Farrar* standard with a more exacting and inapplicable two-part 'catalyst test.' " *Id.* at 7a. The court reasoned that the causation prong of the catalyst test is inapposite because a consent decree always provides the necessary connection between a plaintiff's lawsuit and an eventual change in the defendant's conduct: "The catalyst test bridges a gap that does not exist when a judgment is in effect. A judgment is in effect here, and the catalyst test does not apply." *Id.* at 8a.

The court further reasoned that the catalyst test's second prong — that the relief obtained be "required by law" — was also inapplicable. Instead, paraphrasing an extremely truncated portion of the *Farrar* standard, the court held that the relevant test was simply "whether the 1997 consent decree modified the school district's behavior in . . . ways that benefitted [respondents]" — whether or not such relief was sought by respondents in their pleadings or was in any way required by law. Pet. App. 8a. The court noted, for instance, that "the 1997 decree altered the parties' relationship by creating committees of experts empowered to make recommendations about school district programs," which the court concluded benefitted respondents. *Id.* at 8a-9a. The court instructed the district court to take such

instances into account on remand in determining the extent to which respondents prevailed. *Id.*

The court then remanded with additional instructions on evaluating whether, in the light of its new standard, respondents "obtained excellent results or only limited success." Pet. App. 9a. The Court of Appeals subsequently denied the District's petition for rehearing or rehearing en banc.

REASONS FOR GRANTING THE WRIT

I. CERTIORARI IS WARRANTED BECAUSE THE DECISION BELOW CONFLICTS WITH DECISIONS OF THIS COURT.

The Tenth Circuit held that prevailing party status under 42 U.S.C. § 1988 can arise merely because a settlement agreement or consent decree modifies the defendant's behavior in ways that benefit the plaintiff — regardless whether the agreement or decree provides actual relief on the merits of the plaintiff's claims. Pet. App. 8a. This holding directly conflicts with the Court's decisions establishing the applicable standard for determining prevailing party status.

Under traditional practice in American courts, a party seeking relief through the judicial process must pay its own attorney's fees. *See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 247 (1975). Of course, Congress may abrogate that rule by statute, *id.* at 269, but in the absence of such a statute federal courts have no power to devise their own fee-shifting rules, regardless of how desirable from a policy standpoint the shifting of fees may seem in a particular context. *Id.* The attorney's fees provision in 42 U.S.C. § 1988

is one of a number of examples of statutes by which Congress has modified the traditional American rule in particular contexts.

This Court has held that plaintiffs "prevail" within the meaning of section 1988 when they "succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). This Court has consistently held that a "prevailing" plaintiff is one who advances a meritorious civil rights claim. *See Hanrahan v. Hampton*, 446 U.S. 754, 758 n.4 (1980) (per curiam) (attorney's fees provisions "permit the award of counsel fees *only* to a party who has prevailed on the merits of a claim") (emphasis added); *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 418 (1978) ("when a district court awards counsel fees to a prevailing plaintiff, it is awarding them against a violator of federal law.").

As explained in *Farrar v. Hobby*, 506 U.S. 103, 109-12 (1992), the Court's current rubric for determining prevailing party status evolved out of a trilogy of cases. In *Hewett v. Helms*, 482 U.S. 755 (1987), the Court declared that "[r]espect for ordinary language requires that a plaintiff receive at least some relief on the merits of his claim before he can be said to prevail" for purposes of section 1988. *Id.* at 760. In *Rhodes v. Stewart*, 488 U.S. 1 (1988) (per curiam), the Court stated that a judgment "will constitute relief, for purposes of § 1988, if, and only if, it affects the behavior of the defendant toward the plaintiff." *Id.* at 4. Then, in *Texas State Teachers Assn. v. Garland Independent School Dist.*, 489 U.S. 782 (1989), the Court synthesized the teachings of *Hewitt* and *Rhodes*. The Court stated that a prevailing party is "one who [1.] has succeeded on any

significant claim [2.] affording it some of the relief sought." *Id.* at 791. "[T]he plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant." *Id.* at 792.

In *Farrar v. Hobby*, 506 U.S. 103 (1992), the Court reiterated the two prongs of the prevailing party analysis under section 1988: First, "to qualify as a prevailing party, a civil rights plaintiff must obtain at least some relief on the merits of his claim." *Id.* at 111. Second, "the relief the plaintiff secures must directly benefit him at the time of the judgment or settlement." *Id.* "In short, a plaintiff 'prevails' when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *Id.* at 111-12. This formulation has been the established standard for determining prevailing party status for nearly a decade.

The decision of the court below directly conflicts with the Court's holding in *Farrar*. Though it quoted the *Farrar* standard, as courts typically do when addressing the prevailing party issue, the Tenth Circuit held that the district court abused its discretion when it inquired into whether the relief afforded by the 1997 Agreement and Consent Decree constituted actual relief on the merits of respondents' claims, *i.e.*, whether the relief was in any fashion "required by law." Pet. App. 8a. Discarding *Farrar*'s critical first prong ("actual relief on the merits of [the] claim", 506 U.S. at 111-12), the court remanded with instructions for the district court to consider only "whether the 1997 consent decree modified the school district's behavior in additional ways that benefitted [respondents]" — that is, whether *Farrar*'s second prong alone is met. *Id.* at 8a.

Thus, the court below has held that as long as there is a settlement or consent decree modifying the defendant's behavior in any way that benefits the plaintiff, then it is irrelevant whether the settlement or consent decree was entered into to get rid of frivolous or pointless litigation, whether plaintiff's claims had any merit, whether the outcome agreed to was in any way related to some requirement of federal law, whether the plaintiff requested the relief afforded — or even whether, as here, the parties agreed to put the bitter past behind them, end the legal melee, and work together to achieve a common goal such as the education of children. In short, the Tenth Circuit has held that a settlement or consent decree *automatically* makes a plaintiff a prevailing party, since every settlement can be presumed to benefit the plaintiff in at least some fashion, even if the settlement constitutes little more than tossing a plaintiff the proverbial "bone merely to avoid the expense of defending against an unmeritorious suit." *Brown v. Griggsville Com. Unit School Dist. No. 4*, 12 F.3d 681, 684 (7th Cir. 1993) (Posner, C.J.).

The Court has never gone that far. In *Farrar*, the Court held that securing nominal damages was enough to "materially alter[] the legal relationship between the parties," inasmuch as the judgment "forc[es] the defendant to pay an amount of money he otherwise would not pay." 506 U.S. at 112-13. But that ruling was expressly predicated on the fact that nominal damages cannot be awarded until at least one of the plaintiff's claims is adjudged meritorious; the adjudication vindicates the "*merits* of [the plaintiff's] claim." *Id.* at 111-12 (emphasis added). The Court has never suggested that if the parties agreed to settle such a claim for one dollar, with no admission of liability on the merits, the plaintiff would automatically be considered a prevailing party

for purposes of section 1988 regardless of how frivolous the claim or how disconnected such relief might be from relief actually sought. As Judge Posner has noted, such an approach would be both "odd" and "would be adding injury to injury." *Brown*, 12 F.3d at 684.

Indeed, the Court rejected such a standard in *Farrar*: "to qualify as a prevailing party, a civil rights plaintiff must obtain *at least some relief on the merits of his claim*." 506 U.S. at 111 (emphasis added). To be sure, a settlement or consent decree will often afford "relief on the merits of [a] claim," but that is not always the case and thus cannot merely be presumed under the *Farrar* standard. Otherwise nuisance settlements would always make the plaintiff a prevailing party, a result that surely was never intended by Congress nor endorsed by this Court.

In sum, the Tenth Circuit's approach eviscerates the key inquiry into whether the plaintiff obtained "actual relief on the merits of his claim" and thus conflicts with this Court's holding in *Farrar*.

II. CERTIORARI IS WARRANTED BECAUSE THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF OTHER CIRCUITS AS TO WHETHER MERE BENEFIT TO THE PLAINTIFF IS SUFFICIENT TO JUSTIFY AN AWARD OF ATTORNEY'S FEES.

The decision below also conflicts with the decision of the Eighth Circuit in *Warner v. Independent School District No. 625*, 134 F.3d 1333 (8th Cir. 1998). In that case, Warner, the parent of a disabled child, brought an action to recover parent's attorney's fees for allegedly prevailing against the defendant school district in administrative proceedings under the Individuals with Disabilities Education Act ("IDEA"),

20 U.S.C. § 1400, *et seq.* The administrative proceedings involved Warner's challenge to the district's Individual Education Plan ("IEP") for her son. In due process hearings, the state Hearing Review Officer ultimately rejected Warner's IDEA claim, concluding that the district had in fact complied with federal law. 134 F.3d at 1335. Nevertheless, the Hearing Review Officer order the school district to amend the IEP in a variety of ways that significantly benefitted Warner's son. *Id.*

In the subsequent action for attorney's fees, "the district court concluded that Warner 'did not succeed . . . on the actual merits of the claim or the relief sought,' that the School District 'did comply with the IDEA,' and that 'the relief achieved is not mandated by [the] IDEA.' " *Id.* at 1336 (quoting the district court's decision) (ellipses in original). Yet the district court nonetheless "held that Warner was a prevailing party entitled to an award of attorney's fees because the state administrative proceedings had 'resulted in a material alteration of the legal relationship' between the parties" which had benefitted Warner and her son. *Id.*

On appeal the Eighth Circuit reversed. The court (per Loken, J., joined by Reavley, J.) held that although the Hearing Review Officer's order materially altered the legal relationship of the parties to the benefit of Warner (*Farrar*'s second prong), that alone "is not a basis for awarding fees to a plaintiff who did not prevail on the merits of any claim. . . ." *Id.* at 1336. The court considered the fact that Warner's legal action did indeed result in an order that beneficially altered the legal relationship of the parties to be "the standard by which the Court measures how much relief on the merits is sufficient to justify at least a partial fee award," not an independent ground for awarding fees when the plaintiff's claims have failed. *Id.*

In dissent, Judge Gibson disagreed with the majority's reading of *Farrar* and its predecessors and advocated the very standard adopted by the Tenth Circuit below — that a plaintiff is entitled to attorney's fees where the action has resulted in a " 'material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute,' " regardless whether the plaintiff actually prevailed on the merits of any claim. *Id.* at 1339 (Gibson, J., dissenting) (quoting *Garland Independent School Dist.*, 489 U.S. at 789 as quoted in *Farrar*, 506 U.S. at 111).

The decision in *Warner* directly conflicts with the decision below.[3] Contrary to the majority opinion in *Warner*, but consistent with the *Warner* dissent, the court below held that the relevant inquiry is "whether the 1997 consent decree modified the school district's behavior in . . . ways that benefitted [respondents]" — regardless whether there was any legal merit to respondents' claims. Pet. App. 8a. The decision below thus discards the critical antecedent inquiry into whether respondents obtained any relief "on the merits of [their] claim[s]," *Farrar*, 506 U.S. at 111-12, an inquiry which the majority in *Warner* found dispositive.

The decision below also conflicts in principle with the decisions of a number of other circuits requiring that the plaintiff make at least some showing of merit before a claim can serve as the basis for an award of attorney's fees.

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3. It is of course well established that decisions construing the term "prevailing party" under 42 U.S.C. § 1988 "are generally applicable in all cases in which Congress has authorized an award of fees to a 'prevailing party.' " *Hensley v. Eckerhart*, 461 U.S. 424, 433 n.7 (1983). That *Warner* involved fees under the IDEA, 20 U.S.C. § 1415(e)(4)(B), instead of section 1988 does not in any way lessen the conflict.

For instance, in *Morris v. City of West Palm Beach*, 194 F.3d 1203 (11th Cir. 1999), the court reiterated that where there has been no formal judgment on the merits in favor of the plaintiff, the Eleventh Circuit requires that a plaintiff seeking attorney's fees demonstrate *inter alia* that it "had a 'colorable claim' or 'reasonable likelihood of success on the merits.' " *Id.* at 1208 (citations omitted). The plaintiff must show "that the defendant's conduct was required by law, that the defendant's conduct does not constitute a 'nuisance settlement,' or that the plaintiff's suit was neither frivolous, unreasonable, [n]or groundless." *Id.* at 1210 (citations and internal quotation marks omitted). "These different formulations," the court explained, all address the same concern: that plaintiffs should not be deemed to be prevailing parties if their claims are objectively unmeritorious." *Id.*[4]

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4. This inquiry typically occurs under some form of the catalyst test, which has been used to expand liability for attorney's fees in cases where there has been no adjudication on the merits. This Court is currently considering whether federal fee-shifting statutes permit use of the catalyst test to expand liability for attorney's fees. *See Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*, No. 99-1848. The court below overruled the district court's use of the Tenth Circuit's catalyst test, which includes a requirement that the relief obtained by "required by law," because it considered that test *too exacting*. Pet. App. 7a, 8a. The court below established a standard in cases involving settlements and voluntary consent decrees that is even more permissive than the liability-expanding catalyst test. Yet, the concern that civil rights plaintiffs not be deemed prevailing parties if their claims are objectively unmeritorious is just as much at issue in the context of settlements and voluntary consent decrees as in other situations where there has been no final adjudication on the merits of the plaintiffs' claims.

Other circuits have similar requirements which preclude prevailing party status on meritless claims. *See, e.g., Zinn by Blankenship v. Shalala*, 35 F.3d 273, 274 (7th Cir. 1994) (catalyst test requires that "the defendant must not have acted wholly gratuitously, *i.e.*, the plaintiff['s] claim[], if pressed, cannot have been frivolous, unreasonable, or groundless") (internal citations and quotation marks omitted); *Little Rock School Dist. v. Special School Dist. 1*, 17 F.3d 260, 262 (8th Cir. 1994) (where defendant voluntarily provides relief, no fees where relief was "gratuitous," meaning plaintiff's suit was "frivolous, unreasonable, [or] groundless") (internal citations and quotation marks omitted). The decision below creates a rule that allows for automatic recovery of attorney's fees, even if the plaintiff's claims are wholly frivolous, provided that the plaintiff obtains beneficial relief. Such a standard conflicts in principle with the rule in many circuits that meritless claims cannot be the basis of attorney's fees under federal fee-shifting statutes.

III. CERTIORARI IS WARRANTED BECAUSE THE DECISION BELOW DECIDES THE IMPORTANT FEDERAL QUESTION WHETHER SETTLEMENTS AND VOLUNTARY CONSENT DECREES AUTOMATICALLY GIVE RISE TO PREVAILING PARTY STATUS REGARDLESS OF THE MERIT OF THE CLAIMS OR THE CORRESPONDENCE BETWEEN THE RELIEF SOUGHT AND THE RELIEF OBTAINED.

Although the decision below clearly conflicts with the plain language of the *Farrar* standard, the Court has never directly addressed whether settlements and voluntary consent decrees automatically give rise to prevailing party status regardless of the merit of the plaintiff's claims or the

correspondence between the relief the plaintiff sought and the relief actually obtained. This issue is critically important in institutional reform cases and other civil rights suits where the defendant is willing to make reasonable accommodations and alterations in its programs and procedures, despite not being legally required to do so, in order to put an end to costly and acrimonious litigation and create a win-win situation for all parties.

The present case neatly illustrates the importance of the issue. From the outset the District considered the *Sinajini* enforcement action with its myriad allegations to be wholly without merit, and it was fully prepared to prove as much to the district court. However, when the opportunity arose to end years of litigation and create a more cooperative relationship with respondents and that portion of the Native American community that supported or were sympathetic to respondents' suit, the District took it — not because respondents' claims had any merit but rather because *the District itself* (including all the District's students) stood to benefit tremendously from a cessation of hostilities and greater cooperation. Not the least of the benefits to the District was an end to the perpetual financial drain of the litigation itself, no small consideration in a relatively poor rural school district.

Automatically according prevailing party status to the plaintiff in such win-win situations, merely because the defendant voluntarily entered into a settlement or consent decree which benefits both sides, would arguably deter such beneficial compromises, forcing the parties to waste judicial and client resources on potentially needless litigation. Determining whether such a rule — which the court below has now established in the Tenth Circuit — is consistent

with Congress' intent in enacting section 1988 is of great importance to numerous institutional parties involved in civil rights litigation.

IV. THE DECISION BELOW ERRED IN REVERSING THE DECISION OF THE DISTRICT COURT.

The decision below was also fundamentally in error. As stated in the 1997 Agreement, the District settled not because there was evidence it had broken any law or violated the 1975 Consent Decree, but because the parties mutually "desire[d] to put the litigation behind them" and "work together cooperatively to identify creative and constructive solutions to the educational issues that exist rather than continue the litigation process." *Sinajini*, 964 F. Supp. at 320, ¶ 2 (1997 Agreement). As noted, the parties expressly acknowledged that the "District denies any violation of any state or federal law or any wrongdoing," *id.* at 321, ¶ 5, and in the decree itself the district court stated that "[t]here has been no judicial determination as to the validity of the claims against the District." *Id.* at 320, ¶ 2 (1997 Consent Decree).

As outlined by the district court, *see supra*, with one exception the benefits afforded by the 1997 Agreement were either not sought by the respondents in the enforcement action or were not legally binding on the District. In the one instance where the relief obtained actually corresponded with the relief sought — the requirement to expand and improve two secondary schools — the obligation under the 1997 Agreement was contingent upon the District obtaining funding from outside sources, either the citizens in San Juan County in a special bond election or Congress; failing that, the District's obligation was merely to build what it had money to build after taking care of higher District priorities.

Id. at 322, ¶¶ 12-14. Respondents, by contrast, bound themselves to wait at least 24 months and first to comply with dispute resolution mechanisms before filing another civil rights action in the event financing for the renovations could not be obtained. *Id.* at 322-23, ¶ 14.

The committees of experts which the court below found so significant are actually just advisory bodies which provide the District with ideas and plans for improving education in the District. *Id.* at 324-25, ¶ 31. The District has no legal obligation to accept the advice; discretion remains totally with the District. *Id.* at 325, ¶ 31(e). Rather than saddling the District with a legal duty, therefore, the creation of the committees of experts provides a significant benefit to the District.

Under these circumstances, the district court in no way abused its discretion in limiting the award of attorney's fees incurred in pursuing their only successful claims. 47 F. Supp. at 1328. The district court applied the right standard and reached the correct result. The court below erred in reversing the district court's decision.

V. ALTERNATIVELY, THE COURT SHOULD HOLD THIS CASE PENDING RESOLUTION OF *BUCKHANNON.*

On Sept. 26, 2000, the Court granted certiorari in *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*, No. 99-1848, on the question whether federal fee-shifting statutes make attorney's fees available when the defendant voluntarily provides the plaintiff with the requested relief without any determination whether the defendant violated federal law.

In addressing that question, the Court will very likely decide whether an award of attorney's fees under federal fee-shifting statutes requires at least some showing that the defendant was in fact in violation of federal law. The answer to that question bears directly on the question presented herein and will almost certainly control the determination of this matter. Accordingly, in the alternative, the District respectfully requests that the Court hold this case pending resolution of *Buckhannon*.

CONCLUSION

For the reasons stated here, petitioner respectfully requests that a writ of certiorari be granted. In the alternative, petitioner respectfully requests that the Court hold this case pending resolution of *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*, No. 99-1848, which will address the question, also at issue here, whether federal fee-shifting statutes provide for attorney's fees where the defendant voluntarily provides relief to the plaintiff without any determination as to whether the defendant violated federal law.

Respectfully submitted,

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